IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL No. 527 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

HONOURABLE MS.JUSTICE H.N.DEVANI Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME-TAX - Appellant(s)
Versus
SAURASHTRA INOX(P) LTD. - Opponent(s)

Appearance :
MR TANVISH U BHATT for Appellant(s) : 1,
NOTICE SERVED for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 04/10/2005

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE D.A.MEHTA)

1 On 29/08/2005 after hearing Mr.T.U.Bhatt, learned Standing Counsel for the appellant-revenue notice was issued. Despite service of notice as there was no appearance on behalf of the respondent the matter was adjourned on 27/09/2005 to grant an opportunity to the respondent-assessee. However, even today there is no appearance on behalf of the respondent.

2 **ADMIT.**

3 The following substantial question of law arises for determination :

> *"Whether, on the facts and in the circumstances of the case the Income Tax Appellate Tribunal was justified in law in allowing relief to the tune of Rs.1,70,000/- out of addition of Rs.2,02,850/-?"*

4 In the view that the Court is inclined to take, the appeal is taken up for final hearing and disposal today.

5 The Assessment Year is 1989-90 and the relevant accounting period is previous year comprised of fifteen months from 1/1/1988 to 31/3/1989. On 27/9/1988 a search and seizure operation was conducted at the business premises of the assessee. On the date of search scrap of brass of 4250 kgs. was found having value of Rs.1,70,000/-. It was found by the Assessing Officer that the assessee was not maintaining any stock register in relation to such scrap and therefore the stock statement submitted by the assessee was not reliable. Certain discrepancies were found by the Assessing Officer and on account of such defects an addition of Rs. 2,12,850/- came to be made.

6 The assessee went in appeal before CIT

(Appeals). The addition came to be confirmed by CIT (Appeals) holding that the assessee could not explain the defects pointed out by the Assessing Officer. It was further found by CIT (Appeals) that as per statement of one of the Supervisors, one Shri Harshad Patel, the difference was on account of certain goods which were in process, however, the said statement could not be corroborated by any documentary evidence.

7 The assessee therefore carried the matter in Second Appeal before the Tribunal. The Tribunal has allowed relief by stating thus :

> *"9. We have duly considered the rival contentions and also gone through the inventory prepared by the riding party available at pages 43 wherein brass scrap of 4250 kgs. was found at the premises. No doubt, the assessee is not maintaining any register with regard to scrap but generation of scrap is sine*

qua non in the manufacturing process and the assessee had disclosed such generation at 5664 kgs. Considering the opening stock and the period in between the start of accounting year and the date of search, possibility of scrap at 4250 kgs. is a reasonable one. Therefore, in our opinion, there is no unexplained scrap available has been put-forth. Therefore, we modify the order of the AO and direct him to exclude Rs.1,70,000/- out of the addition of Rs.2,12,850/- made by him on account of discrepancy in stock as per record and physical verification during the search. This ground of appeal is partly allowed".

8 As can be seen from the impugned order of the Tribunal it has failed to appreciate that the addition of Rs.2,12,850/- was made on account of discrepancy in stock as per record and physical verification conducted at the time of search. The

assessee was required to explain the discrepancy and the defects recorded by the Assessing Officer. The Tribunal ought to have appreciated that the question of generation of scrap was not in dispute but the discrepancy between the records and the physical stock. The assessee tendered a facile explanation that during manufacturing process scrap is generated and hence there is bound to be some scrap. The Tribunal has accepted the said explanation without appreciating the controversy before it viz. basis of addition made by the Assessing Officer.

9 In these circumstances, it is apparent that the impugned order of the Tribunal cannot be allowed to stand. However, in the interest of justice, it would be in the fitness of things if the appeal on this count is restored to the file of the Tribunal. The Tribunal shall deal with this ground of appeal after giving reasonable opportunity of hearing to both sides. Accordingly ITA No.:708/RJT/2003 in relation to addition of Rs.2,12,850/- on account of

discrepancy in stock of scrap stands restored to the file of the Tribunal. The appeal is accordingly allowed. There shall be no order as to costs.

(D.A.Mehta, J) (H.N.Devani,J)

m.m.bhatt